

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Martha Wright, Dorothy Wade, Annette Wade,)	
Ethel Peoples, Mattie Lucas, Laurie Nelson,)	
Winston Bliss, Sheila Taylor, Gaffney &)	
Schember, M. Elizabeth Kent, Katharine Goray,)	
Ulandis Forte, Charles Wade, Earle Peoples)	Docket No. 96-128
Darrell Nelson, Melvin Taylor, Jackie Lucas,)	
Peter Bliss, David Hernandez, Lisa Hernandez)	
and Vendella F. Oura)	
)	
Petition for Rulemaking or, in the Alternative,)	
Petition to Address Referral Issues In Pending)	
Rulemaking)	

**COMMENTS OF THE
ASSOCIATION OF PRIVATE CORRECTIONAL
AND TREATMENT ORGANIZATIONS**

Andrew D. Lipman
Kathy L. Cooper
Kathleen G. Ramsey
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Tel.: (202) 945-6922
Fax: (202) 424-7645

Counsel for the Association for Private
Correctional and Treatment Organizations

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SUMMARY

APCTO urges the Commission to deny the *Wright Petition*. As an initial matter, there is no basis for Petitioners' request to target private prisons alone. Such a discriminatory policy would have an inequitable, inefficient impact on the U.S. prison system. Furthermore, the Commission should continue its longstanding policy of deferring to prison officials as to the need for exclusive arrangements for inmate calling services. In effect, the proposals in the *Wright Petition* would place the Commission in the position of micromanaging the prison system's inmate calling services and would jeopardize the ability of prison officials to balance the safety needs of the prison environment and the safety needs of the public. This result is contrary to well-established law and Commission policy that defers these considerations to prison officials.

If, however, the Commission decides to reconsider its longstanding policy to permit exclusive arrangements in this limited context, APCTO submits that exclusive arrangements are an essential, necessary security tool for prison officials to control inmate telephone use. The security of the prison system is fundamental to any consideration that would require prison officials to allow inmates multiple avenues of access to the public.

The *Wright Petition* fails to point to a single change in the prison system that warrants review of the Commission's longstanding policy. The *Wright Petition* also fails to demonstrate that reversal of this policy will not sacrifice security. Finally, the *Wright Petition* never establishes that competition will reduce inmate telephone service rates. For the reasons discussed herein, APCTO urges the Commission to deny the *Wright Petition*.

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The Association of Private Correctional and Treatment Organizations (“APCTO” or “Association”), by its undersigned counsel and pursuant to 47 C.F.R. §§ 1.415, 1.419, respectfully submits these comments in opposition to the Petition filed by Martha Wright, *et al.* on November 3, 2003.¹ APCTO urges the Commission to deny the *Wright Petition*. As a threshold matter, Petitioners fail to establish a legitimate legal basis for targeting private prisons and promoting a regulatory policy that is discriminatory on its face. Moreover, due to the complex issues facing all prisons in the United States with increased national and international security concerns, an ever-growing prison population, and the unique costs of inmate calling

¹ Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues In Pending Rulemaking, Docket 96-128, DA-03-4027A2 (2003) (“*Wright Petition*”). *See also*, *Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunication Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, Docket No. 96-128 (2002) (“*Inmate Payphone Rulemaking*”).

services, the Commission should, consistent with its past practice and the practice of federal courts, continue to defer to prison officials as to the need for exclusive arrangements for inmate calling services.

If, however, the Commission nevertheless decides to reconsider its longstanding policy to permit exclusive arrangements in this limited context, APCTO submits that exclusive arrangements are an essential, necessary security tool for prison officials to control inmate telephone use. Now, more than ever, prison officials need more resources, not less resources to combat crime and protect the public. Due to the extensive criminal activity that occurs within prisons through the use of telephones, prison officials rely on the exclusive relationships with their chosen inmate service provider and the immediate and continuous access over the phone system to prevent crime and protect the public. The security of the prison system is fundamental to any consideration that would require prison officials to allow inmates multiple avenues of access to the public.

The *Wright Petition* fails to point to a single change in the prison system that warrants review of the Commission's longstanding policy on inmate calling services. The *Wright Petition* also fails to demonstrate that reversal of this policy will not sacrifice security. Finally, the *Wright Petition* never establishes that competition will reduce inmate telephone service rates. For the reasons discussed herein, APCTO urges the Commission to deny the *Wright Petition*.

I. INTRODUCTION

APCTO is a non-profit association that represents the interests of organizations that provide a broad array of correctional and treatment services throughout the United States and other nations. Members of APCTO range from non-profit and for-profit corporations to government officials, academics, and employees of correctional facilities. Its members include

major correctional firms, substance abuse treatment programs, medical and mental health service providers, pharmaceutical services, and a telecommunications management company.

The Association was established in May 2001 to improve the quality of its members' services and products; to develop and maintain communication and understanding between private companies, public agencies, and the non-profit community; and to promote and make readily available accurate and useful industry research. Since its formation, APCTO has endeavored to assure that correctional services provided by the private sector meet or exceed professional standards and to facilitate the development of meaningful partnerships between government agencies and APCTO's corporate members.

Many of the Association's members have contractual relationships with federal, state and local governments to provide correctional services in the private sector. The *Wright Petition* threatens to strip APCTO members from controlling the prison telephone system thereby undermining their ability to protect the public and detect criminal activity. Moreover, since the *Wright Petition* is directed at telecommunications services provided at privately-administered prisons only,² APCTO and its members are concerned that the issues raised in the *Wright Petition* will affect both their current and future business—even services and products that are not directly related to telecommunications services. Accordingly, APCTO has a significant interest in the Commission's consideration of the issues raised in the *Wright Petition* and, therefore, submits these comments.

² *Wright Petition* note 4.

II. PETITIONERS FAIL TO ESTABLISH A LEGITIMATE LEGAL BASIS FOR TARGETING PRIVATE PRISONS AND PROMOTING A REGULATORY POLICY THAT IS DISCRIMINATORY ON ITS FACE

A. There is No Basis for Petitioners' Request to Target Private Prisons Only

Without justification, Petitioners target private prisons only. Petitioners lobby the Commission to prohibit “anticompetitive practices that result in excessive inmate telephone rates at *privately*-administered prisons.” *Wright Petition* at 1 (emphasis added). The alleged “anticompetitive practice” is the practice of exclusive arrangements between private prisons and telecommunications carriers. Most, if not all, prisons in this country, both private and public, provide inmate access to payphones through exclusive arrangements, and as explained herein, such arrangements are necessary to address the unique circumstances of the prison environment. Petitioners fail to point to any aspect of exclusive arrangements in federal and state prisons that would warrant treating them differently from those of private prisons. To the contrary, the expert, upon whom Petitioners rely, readily admits that “the issue of inmate service competition is a generic question, and the conclusions drawn in [his] analysis would apply to all prison calling systems.” Dawson Affidavit at 3. There is no difference between the private prisons and federal and state prisons with regard to the exclusivity of the payphone contracts – for essential security reasons they all appropriately restrict competitive access.

The alleged basis for this discrimination, which is described in a single footnote in the Petition, is a fear of a “possible conflict with state laws regulating the administration of publicly administered prisons.” *Wright Petition* at fn 4. Although this cryptic assertion does not provide any explanation whatsoever, in the context of the Petition, Petitioners appear to be arguing that state laws regulating public prisons either permit the “anticompetitive practices” of which the Petitioners complain or preclude the Commission from regulating telecommunications provided

at such facilities. This is a distinction without a difference, because private prisons must also comply with the same state laws. In addition, the same public policy interest in maintaining security at such facilities also applies in both instances. Indeed, federal and state governments administer indirectly the private prisons through contractual agreements that comprehensively govern the administration of such facilities. After all, private prisons house the inmates of the federal, state and local governments. There is no basis for Petitioners' request to target private prisons alone.

B. A Discriminatory Policy will have an Inequitable, Inefficient Impact on the Prison System

A discriminatory policy will have an inequitable, inefficient impact on the U.S. prison system by jeopardizing the private prisons' ability to maintain essential security measures and, as a consequence, impairing federal, state, and local government use of private prisons. There is no basis for this result, nor is there any basis for the implication that the telephone systems in private inmate facilities are being operated in a way that is not consistent with the public interest and legitimate security needs.

Federal agencies and state governments have been contracting with private prisons since the mid-1980s.³ Three-fifths of all U.S. states contract with private corporations to house a portion of their state prisoners.⁴ Privately-operated corrections facilities manage just under 6%

³ "A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons," A. Volokh, Harvard Law Review, Vol. 115, No. 7: 1868-1891 (May 2002). *See also*, "Cost Comparisons Between State and Private Correctional Facilities: Apples to Apples?," Susan Byorth Fox, Montana Correctional Standards and Oversight Committee, http://leg.state.mt.us/css/publications/research/past_interim/cor_rpt4.asp (February 1998).

⁴ "The Pros of Privately-Housed Cons: New Evidence on the Cost Savings of Private Prisons," Matthew Mitchell, Rio Grande Foundation-New Mexico, www.correctionscorp.com/researchfindings.html (March 2003).

of all state prisoners and more than 12% of all federally sentenced offenders.⁵ Further, APCTO's members continue to increase their presence in providing correctional services. The number of private correctional facilities increased by 140% between 1995 and 2000 compared to a 14% increase in the total number of federal, state, and private facilities.⁶

Despite positive findings that private prisons run more efficiently and professionally than government run prisons,⁷ the *Wright Petition* proposes a prohibition on exclusive arrangement that would severely jeopardize security and likely impair the use of private prisons. The prison system, already overcrowded and overstrained financially, cannot afford such a wasteful overhaul. Nonetheless, the federal, state, and local governments would not be able to ignore a payphone policy that would threaten the very purpose of the prison system – to protect the public.

III. DUE TO THE COMPLEX ISSUES FACED BY PRISON OFFICIALS, THE COMMISSION SHOULD CONTINUE ITS PAST PRACTICE OF DEFERRING TO PRISON OFFICIALS

In addressing the regulation of inmate calling services, the Commission has consistently recognized the special circumstances, and in particular the security concerns, governing the provision of telephone services to inmates at correctional facilities. Moreover, the Commission's

⁵ "Prisoners in 2002," Paige M. Harrison and Allen J. Beck, Bureau of Justice Statistics Bulletin, U.S. Department of Justice, Bureau of Justice Statistics, www.ojp.usdoj.gov/bjs/abstract/p02.htm (July 2003). Overall, private facilities held 6.5% of all state and federal inmates in 2002. *Id.*

⁶ "Census of State and Federal Correctional Facilities, 2000," James J. Stephan and Jennifer C. Karberg, U.S. Department of Justice, Bureau of Justice Statistics, www.ojp.usdoj.gov/bjs/abstract/csfcf00.htm (August 2003).

⁷ "The Interrelationship Between Public and Private Prisons: Does the existence of prisoners under private management affect the rate of growth in expenditures on prisoners under public management," James Blumstein and Mark A. Cohen, Vanderbilt Law School and Owen Graduate School of Management, www.correctionscorp.com/researchfindings.html (April 2003).

treatment of inmate calling services follows well-established legal precedent that grants deference to prison officials in the management of their correctional facilities. Given the unique security and public policy issues associated with inmate calling services, the Commission has exempted such services from certain requirements that typically apply to providers of telecommunications services. The special circumstances governing inmate calling services have not changed in any manner, and in fact, recent global events have heightened security concerns in the prison system. Thus, the unique circumstances governing the administration of prisons and the legitimate security concerns associated with inmate calling services in those prisons are key factors to consider with respect to the *Wright Petition*. As demonstrated herein, the proposals in the *Wright Petition* would have the Commission inserting itself in the management of a correctional facility's provision of services to its prisoners, a result that is contrary to well-established legal precedent and long-standing Commission policy.

Officials managing and operating correctional facilities must balance several difficult tasks, which include maintaining an orderly and safe environment for their employees and the inmates, rehabilitating prisoners, and establishing strict security measures to protect the public at large. Telephone use plays a significant role in the prison officials' management and rehabilitation of their inmates, but it also is an important security concern. As explained in more detail below, without the proper security measures, inmates can use the telephone to threaten and harass victims and their families, judges, prosecutors and witnesses.⁸ Inmates can also use the telephone to undertake other criminal activities against the public and engage in phone fraud.⁹

⁸ "Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges," U.S. Department of Justice, Office of Inspector General Special Report, www.usdoj.gov/oig/special/99-08/index.htm (August 1999).

⁹ *Id.*

The courts have recognized the inherent difficulty of balancing the public's safety and welfare with the rights of inmates, and, for this reason, have deferred this responsibility to prison officials who are in the best position to maintain this balance. The Supreme Court has found that:

Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources Subjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration.¹⁰

The courts have also recognized this deference with respect to prison officials' regulation of telephone services to the inmates, where telephone use, or denial of such use, is a critical component of prison administration.¹¹ The courts have found that inmates have "no right to unlimited telephone use," and that prison officials can regulate such use to balance the "legitimate security interests of the penal institution."¹² This deference also applies to the prison officials' management of the provision of telephone services.¹³ Indeed, under certain circumstances, prison officials may determine that telephone use in a particular facility must be strictly limited.¹⁴ Certainly, in such a case, the Commission would not attempt to undermine

¹⁰ *Turner v. Safely*, 482 U.S. 78, 84-85 (1987).

¹¹ "Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges," U.S. Department of Justice, Office of Inspector General Special Report, www.usdoj.gov/oig/speicial/99-08/index.htm (August 1999). For instance, federal prisons only allowed one collect call every three months until the early 1970s. Several states limited calls to 15 minutes each in 1995, and Texas continues to limit inmate phone calls to one 5-minute call every 90 days. *Id.*

¹² *Strandberg v. City of Helena*, 791 F.2d 744, 747 (9th Cir. 1986).

¹³ *Fillmore v. Ordonez*, 829 F.2d 1544, 1563-64 (D. Kan. 1993), *aff'd* 17 F.3d 1436 (10th Cir. 1994).

¹⁴ *Supra* note 11.

this decision because prison administration is not its area of expertise. The Commission simply is not in the business of running prisons.

For these same reasons, the Commission has not attempted to apply the same requirements appropriate to publicly available telephone services to services provided to inmates in correctional facilities.¹⁵ Recognizing the special circumstances governing the management of inmate calling services, the Commission has declined to impose certain traditional telephone regulations on such services. For example, the Commission found that requirements imposed on operator services could not apply to inmate-only phones in correctional facilities given the “exceptional set of circumstances that warrants their exclusion from [OSP] regulation.”¹⁶ The Commission also recognized a clear distinction between publicly available and inmate telephones in its consideration of billed party preference, holding that there are special security concerns associated with inmate calls.¹⁷ Specifically, the Commission held:

We are persuaded by comments of the United States Attorney General, other federal officials, and nearly all who have commented on this issue that implementation of BPP for outgoing calls by prison inmates should not be adopted. With regard to such calls, it has generally been the practice of prison authorities at both the federal and state levels, including state political subdivisions, to grant an outbound calling monopoly to a single IXC serving the

¹⁵ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Order on Remand and Notice of Proposed Rulemaking*, CC Dkt. No. 96-128, FCC 02-39, ¶ 72 (rel. Feb. 21, 2002) (“We recognize that the provision of inmate calling services implicates important security concerns and, therefore, involves costs unique to the prison environment.”).

¹⁶ See *In the Matter of Policies and Rules Concerning Operator Service Providers*, CC Dkt. No. 90-313, 6 FCC Rcd. 2744, ¶ 15 (1991) (declining to impose operator service requirements on carriers providing services to inmate-only phones at correctional facilities).

¹⁷ See *Billed Party Preference for InterLATA 0+ Calls*, *Second Report and Order and Order on Reconsideration*, CC Dkt. No. 92-77, FCC 98-9, paras. 57-61 (rel. Jan. 29, 1998) (declining to impose billed party preference requirements on outgoing calls by prison inmates).

particular prison. This approach appears to recognize the special security requirements applicable to inmate calls.¹⁸

Thus, it is clear that the Commission's policy is to defer the key decisions associated with the provision of inmate calling services to the officials responsible for the correctional facilities because these officials are in the best position to address the special needs and security concerns of those facilities.

The proposals in the *Wright Petition* would require the Commission to regulate the selection of service providers, contract arrangements, and the terms and conditions of providing inmate calling services. In effect, the proposals in the *Wright Petition* would place the Commission in the position of micromanaging the prison system's inmate calling services and would jeopardize the ability of prison officials to balance the safety needs of the prison environment and the safety needs of the public. This result is contrary to well-established law and Commission policy that defers these considerations to prison officials.

IV. THE COMMISSION'S EXISTING POLICY IS BASED ON AN EXTENSIVE FACTUAL RECORD THAT EXCLUSIVE ARRANGEMENTS ARE ESSENTIAL TO PROTECTING THE PUBLIC AND COMBATING SERIOUS CRIMINAL ACTIVITY

Petitioners' substantive arguments against exclusive providers of inmate payphone service are without merit. Acknowledging the Commission's longstanding policy permitting exclusive arrangements, Petitioners claim that such a policy should be reconsidered for two reasons. First, Petitioners argue that the policy was based on incorrect assumptions. *Wright Petition* at 9. Second, Petitioners argue that "changes in factual and legal circumstances" require

¹⁸ *Id.* at ¶57.

the Commission to reconsider its policy. *Id.* at 18.¹⁹ As demonstrated below, the policy is based on an extensive public record and there have been no factual or legal changes that would necessitate reconsideration of the policy. To the contrary, heightened concern over domestic and international terrorism amplifies the security concerns expressed herein.

Furthermore, Petitioners' reliance on the Affidavit of Douglas A. Dawson ("Dawson Affidavit") is misplaced. Assuming for the sake of argument that competition is technically and economically feasible (the conclusion reached by the Dawson Affidavit),²⁰ the numerous layers of security problems handled by prison officials and the extraordinary costs associated with providing inmates payphone access warrant exclusive arrangements.

A. The Commission's Policy is Based on an Extensive Record, Not Mere Assumptions

Petitioners argue that the Commission's long standing policy permitting exclusive arrangements is based on incorrect assumptions. *Wright Petition* at 9-10. This argument is groundless. The record before the Commission on the matter of inmate payphone service is extensive.²¹ For over a decade, the Commission has considered an exhaustive amount of factual information, documents and testimonials on the subject of inmate payphone service. The Attorney General Janet Reno, the Department of Justice and the Federal Bureau of Prisons,

¹⁹ Citing *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992), *cert. denied Galaxy Communications v. FCC*, 506 U.S. 816 (1992), *remanded by Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993).

²⁰ Mr. Dawson concludes that "it would be economically and technologically feasible to introduce competition into prison inmate calling services, consistently with all legitimate security and other penological requirements. . . ." Dawson Affidavit at 18-19.

²¹ Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77; *see also*, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, FCC 02-39, CC Docket No. 96-128; *see also*, In the Matter of Petition for Declaratory Ruling Filed by Outside Connection, Inc., DA 03-874, WCB/Pricing 03-14.

experts in the area of prosecuting and housing incarcerated individuals and protecting the public, have participated in these proceedings.²² Contrary to Petitioners' claims, the Commission has considered competitive options and found such options too precarious. The Commission's policy is well founded on factual evidence that the heightened security needs in the prison environment warrant exclusive arrangements.

B. The *Wright Petition* Proposal Jeopardizes the Security Necessary to Protect the Public

1. The Dawson Affidavit Oversimplifies the Security Features

Petitioners rely almost exclusively on the Dawson Affidavit to support their claim that competition would not reduce prison security or threaten penological goals. The foundation of the Dawson Affidavit – his analysis of the limited security features that must accompany a competitive inmate payphone system -- is over-simplified and therefore flawed. At the outset, it is important to stress that permitting inmates access to telephones creates a hole in the prison wall and policing this hole has proven to be a complicated and expensive task. Although the Dawson Affidavit identifies the security features typical of an inmate telephone systems, such technical features do not tell the whole story. In addition to the technical features²³ – which

²² Letter from Janet Reno, the Attorney General, to the Honorable Reed E. Hundt (Oct. 31, 1994) (Ms. Reno stated that the ability to control and monitor inmate telephone use “is crucial in maintaining the security of correctional facilities, the safety of the general public, and special protections for victims and witnesses of crime.” *Id.*; see also, *Billed Party Preference for 0+ InterLATA Calls*, Ex Parte Comments of the Office for Victims of Crime Office of Justice Programs United States Department of Justice on Further Notice of Proposed Rulemaking, CC Docket No. 92-77 (1994); *Billed Party Preference for 0+ InterLATA Calls*, Ex Parte Comments of the Federal Bureau of Prisons United States Department of Justice on Further Notice of Proposed Rulemaking, CC Docket No. 92-77.

²³ It is noteworthy that inmate service providers expend significant resources in research and development to improve security features to better protect the public and detect criminal activity over the phone system. Such expenditures are not incurred by other competitive carriers that do not serve the prison directly. The Dawson Affidavit fails to address this point.

may vary from prison to prison – there are manpower features necessary to secure a prison telephone system. As the Department of Justice found in its investigation of the Bureau of Prisons, “[n]o new technology on the horizon . . . will solve the problem of inmate telephone abuse without aggressive intervention by the [Bureau of Prison] officials.”²⁴

Certainly, the security needs of a prison evolve and change. One thing is certain, however: criminal activity within prisons is on the rise.²⁵ Increased intelligence on telephone abuse by inmates has continually required more resources to secure the inmate payphone system, not less resources.²⁶ For example, in 1999, after several high profile crimes were orchestrated by inmates from within the prison walls through the use of the telephone system, the Department of Justice conducted an extensive review of the security over prison payphones. The Department of Justice recommended massive changes to increase exponentially the security of the inmate system. In order to fulfill many of the recommendations, prison officials require immediate and continuous access over the system, including control over the inmate payphone provider. Furthermore, the recommendations require close and frequent communication between prison officials, law enforcement and the inmate service provider. It is unlikely the prison officials could manage the entrance of several or hundreds of competitive carriers and adequately work through such a maze in the event of a security breach or emergency. As discussed below, the competitive carriers would have no accountability to the prison officials.

²⁴ “Criminal Calls: A Review of the Bureau of Prisons’ Management of Inmate Telephone Privileges,” U.S. Department of Justice, Office of Inspector General Special Report, www.usdoj.gov/oig/speical/99-08/index.htm (August 1999).

²⁵ *Id.*

²⁶ *Id.*

Even though the security features described by Mr. Dawson may technically exist, technology alone is not enough to protect the public. The Dawson Affidavit over simplifies the challenges faced by prison officials and their inmate payphone service providers. Thus, the conclusion reached by Mr. Dawson that competition would not interfere with prison security is flawed because Mr. Dawson fails to acknowledge the multiple layers of prison payphone security.

2. Under the Petitioners' Proposal, the Competitive Carriers Would Not Share Responsibility for Security Breaches

The Dawson Affidavit also concludes, without explanation, that

[t]he interconnecting carriers thus would be in the business of completing long distance calls, but, because they would take the calls at the prison system switch and delivery them to terminating LECs, they would not have the ability to bypass any of the penological requirements of each prison, which would be implemented and enforced by the underlying switch provider, just as Evercom enforces those requirements today.²⁷

Mr. Dawson anticipates that the “underlying switch providers” would be responsible for ensuring adherence to the penological requirements, as they do today. Thus, under Mr. Dawson’s scheme, all of the security burdens remain on the prison and its chosen inmate service provider and the competitive carriers are not held accountable and have no incentive to ensure security needs are met. Will carriers block re-origination of calls by inmates to judges, witnesses, and victims? Will a carrier’s operators recognize inmate calls and be able to withstand inmate abuse and be fully trained not to succumb to inmate manipulation? The *Wright Petition* proposal introduces a host of opportunities for abuse and potential security breaches. It is unacceptable and irresponsible to sacrifice prison security for a theoretical possibility of competition and the mere assumption of lower rates. It is also unclear how the underlying switch provider will police

²⁷ Dawson Affidavit at 22.

violations – or how the prison officials will recover the costs of such efforts in order to reasonably compensate the underlying switch provider. These issues are not addressed by the *Wright Petition*.

C. There are High Costs Associated with Establishing a Secure Telephone System in Prisons

A notable deficiency in the Dawson Affidavit is the failure to recognize prison costs associated with inmates payphone security. Public policy has dictated restrictions on inmate telephone use because the security needed is necessary. Although regrettable, those restrictions and related costs may result in a higher price for completion of inmate calls. The public should not be required to subsidize the cost of the legitimate and unique costs associated with providing safe and secure telephone services to inmates.

The privilege of using a telephone (as opposed to other types of communication such as letter writing) imposes significant costs on the prison. In addition to the costs related to the special technical needs and equipment of the prison telephone system, there are also basic costs for facilities, chairs, and tables to accommodate inmate telephone use. Additional guards are necessary to monitor the telephone area and coordinate use of the phones. Numerous personnel are needed to monitor calls, investigate calling patterns, decipher coded conversations, gather intelligence, and administer inmate changes to permitted called party numbers (which may occur on a daily basis).

The costs incurred by prisons to secure the telephone system continue to increase, despite advancement in technology. Among other things, prison officials are being asked to (1) improve training for staff that monitor inmate telephone use, (2) increase communication between prison investigators and law enforcement on suspicious calls, (3) improve intelligence gathering on inmates that exhibit suspicious telephone habits, (4) increase the percentage of inmate telephone

calls it monitors, and (5) locate and/or hire investigators that speak other languages. The Dawson Affidavit does not address these or any other of the unique costs attributable to the special security needs of correctional facilities.

D. Exclusive Arrangements are Necessary to Meet the Public Interest Need For Security; and the Current Inmate Payphone Rates – Which Reflect Security Costs - Are Reasonable

Petitioners and Mr. Dawson also make a purported public interest argument that:

lowering the cost of prison inmate calling would bring about penological benefits, such as improving family relations for prisoners and improving the chance of successful rehabilitation and integration into the community after the sentence is completed.

Dawson Affidavit at 24; *see also* Petition at 14-15. First, Petitioners and Mr. Dawson fail to demonstrate that competition in the inmate market will actually reduce rates. Second, Petitioners and Mr. Dawson fail to point to any study or other support for this statement. In contrast, in 1999, the Department of Justice found that no study has ever been performed to support this alleged benefit of telephone calls.²⁸

Nonetheless, APCTO supports *reasonable* inmate payphone rates, which must take into account the extraordinary costs associated with protecting the public. A reasonable inmate payphone rate is not the same as reasonable rate for a telephone service that does not require all the security features or have the additional costs as described above. This is an important distinction. The Commission recognized this distinction in its recent Notice of Proposed Rulemaking:

²⁸ “Criminal Calls: A Review of the Bureau of Prisons’ Management of Inmate Telephone Privileges,” U.S. Department of Justice, Office of Inspector General Special Report, at Chapter Two, www.usdoj.gov/oig/special/99-08/index.htm (August 1999). The Department also noted that approximately 22 percent or more of the inmates are incarcerated for life and will not be integrated back into society. *Id.*

We recognize that the provision of inmate calling services implicates important security concerns and, therefore involves costs unique to the prison environment.²⁹

The resources and capital investment of both the prison and inmate service provider to allow inmates access to the world outside the prison walls and simultaneously fulfill the commitment to protect the public is extraordinary and complex. Accordingly, Petitioners' reference to the Commission's *Competitive Networks* proceeding is not persuasive. *Wright Petition* at 16. Commercial buildings and their tenants are nothing like prisons and their inmates and the exclusive arrangements in the commercial MTE setting were not necessary to protect the public from criminal activities.

APCTO also notes that Petitioners have the ability to refuse a call before incurring any charges. The FCC has already instituted certain protections to ensure that the inmates, friends, and family are aware of the costs associated with calls originating from inmate facilities.³⁰ Thus, to the extent the price of communicating by telephone is too costly, Petitioners have the option of refusing to accept as many calls and of communicating by other means (*e.g.*, writing a letter).

In sum, the Petitioners' call "to advance the public interest in reasonable calling rates" is already being served – the rates currently charged may be somewhat higher than the rates charged for non-inmate calls, but non-inmate calls do not involve costs necessary to address the security concerns that are particular to the prison environment. The highest priority for prisons that permit inmate access to telephones is to protect the public from incarcerated individuals and to prevent criminal activities over the telephone lines by the inmates. These twin goals must govern any decision to change the inmate payphone service.

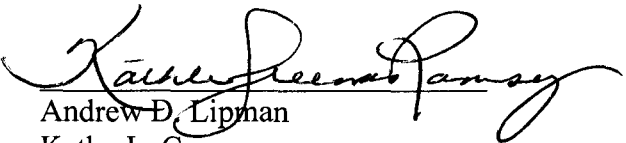
²⁹ *Inmate Payphone Rulemaking* at ¶ 72.

³⁰ *See* 47 C.F.R. 67.710.

V. CONCLUSION

For the reasons discussed herein, the Commission should deny the Petition of Martha Wright *et al.*

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathleen Greenan Ramsey", is written over a horizontal line.

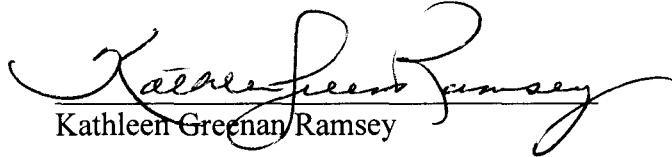
Andrew D. Lipman
Kathy L. Cooper
Kathleen Greenan Ramsey
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Tel.: (202) 945-6922
Fax: (202) 424-7645

Counsel for the Association for Private
Correctional and Treatment Organizations

Dated: March 10, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2004, except as otherwise noted on the attached service list, I caused true and correct copies of the forgoing Comments of the Association of Private Correctional and Treatment Organizations to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.


Kathleen Greenan Ramsey

SERVICE LIST

Marlene H. Dortch*
Secretary
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Qualex International*
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Deborah M. Golden
D.C. Prisoners' Legal Services Project, Inc.
2639 Connecticut Avenue, N.W.
Suite 225
Washington, D.C. 20008

Stephen G. Seliger
Laurie S. Elkin
Seliger & Elkin, Ltd. #500
155 North Michigan Avenue
Chicago, IL 60601

Barbara J. Olshansky
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

Cheryl A. Tritt
Frank W. Krogh
Jennifer L. Kostyu
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006

Joi Nolen*
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Deena Shetler (2 copies)
Deputy Division Chief
Pricing Policy Division
Wireline Competition Bureau
Federal Communication Commission
445 12th Street, S.W., Rm. 5-A221
Washington, D.C. 20554

Paul C. Besozzi
Patton Boggs, LLP
2550 M Street, N.W.
Washington, D.C. 20037

Glenn B. Manishin
Stephanie A. Joyce
Kelley Drye & Warren, LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

Mark D. Schneider
Sidley Austin Brown & Wood, LLP
1501 K Street, N.W.
Washington, D.C. 20005

*Via electronic filing or delivery.